



Dale Saran <dalesaran@gmail.com>

## Still Gathering names

Dale Saran <dalesaran@gmail.com>

Mon, Jun 27, 2022 at 3:43 PM

To: "Avallone, Zachary A. (CIV)" <Zachary.A.Avallone@usdoj.gov>

Cc: Brandon Johnson <bcj@defendingtherepublic.org>, "Lowenstein, Jody D. (CIV)" <Jody.D.Lowenstein@usdoj.gov>, "jward@garloward.com" <jward@garloward.com>

Sounds good to me.

On Mon, Jun 27, 2022 at 3:34 PM Avallone, Zachary A. (CIV) <Zachary.A.Avallone@usdoj.gov> wrote:

Let's plan for 930 then? We can circulate a dial-in.

**Zachary A. Avallone** | Trial Attorney  
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On Jun 27, 2022, at 4:28 PM, Brandon Johnson <bcj@defendingtherepublic.org> wrote:

I can do up through noon ET

Sent from ProtonMail mobile

----- Original Message -----

On Jun 27, 2022, 3:16 PM, Dale Saran <dalesaran@gmail.com> wrote:

I'm fine all morning starting at 9AM ET. I think Brandon's flight is later, but I'm not certain of that or the time.

Dale

On Mon, Jun 27, 2022 at 2:50 PM Lowenstein, Jody D. (CIV) <Jody.D.Lowenstein@usdoj.gov> wrote:

Thanks, Dale. Zach and I are both available anytime before noon. Because it sounds like Brandon may be tied up at some point in the morning, we would be happy to hop on a call when it's convenient for you both. Just let us know what works best for you.

**Jody Lowenstein**

(202) 598-9280

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**From:** Dale Saran <dalesaran@gmail.com>

**Sent:** Monday, June 27, 2022 3:27 PM

**To:** Lowenstein, Jody D. (CIV) <Jody.D.Lowenstein@usdoj.gov>  
**Cc:** bcj@defendingtherepublic.org; jward@garloward.com; Avallone, Zachary A. (CIV) <Zachary.A.Avallone@usdoj.gov>  
**Subject:** Re: [EXTERNAL] Still Gathering names

Absolutely. I'm available.

I think Brandon might be traveling, but it depends on what time.

I'll stand by for a time.

Dale

On Mon, Jun 27, 2022 at 1:30 PM Lowenstein, Jody D. (CIV) <Jody.D.Lowenstein@usdoj.gov> wrote:

Hi Dale,

It sounds like it might be helpful for both sides if we were to get on the phone again to discuss this situation. Would you be available for a call sometime tomorrow morning?

Thanks,

**Jody D. Lowenstein**

Trial Attorney

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[jody.d.lowenstein@usdoj.gov](mailto:jody.d.lowenstein@usdoj.gov)

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**From:** Dale Saran <dalesaran@gmail.com>  
**Sent:** Monday, June 27, 2022 1:51 PM  
**To:** Lowenstein, Jody D. (CIV) <Jody.D.Lowenstein@usdoj.gov>  
**Cc:** bcj@defendingtherepublic.org; jward@garloward.com; Avallone, Zachary A. (CIV) <Zachary.A.Avallone@usdoj.gov>  
**Subject:** Re: [EXTERNAL] Still Gathering names

Jody,

I'm a bit confused by your reply. You refer to the members of MAFL as "*non-party* members of an association" and state that they are not entitled to "individual relief without joining the action as a party."

But all plaintiffs in MAFL are already parties to the action by virtue of their membership in MAFL; the FRCP specifically contemplates this in Rule 17. Rule 17(b) sets for the capacity to sue or be sued and sub (3)(A) is clear that "a partnership or other unincorporated association with no such capacity, under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws." Read in conjunction with Rule 23 (and 23.2), I think (at least part of) the reason for those rules is so that courts dealing with class actions don't have to have a complaint with a list of 524 (or more) names. Our complaint is styled as a class action and specifically pleads the 14 named plaintiffs + the other 510 plaintiffs as members of MAFL, which was formed to meet Rule 17's definition of "parties."

Given that, will you reconsider your stance and go back out to the commands?

(Also, can you tell me, given what you've stated in your email, are you saying that if we re-pleaded the complaint to include EVERYONE'S name on the caption as "named plaintiffs" that you *would* be willing to go to the Commands and ask for them to pause any drops or admin action? IOW, am I correct that you're hanging your hat solely on the fact that the plaintiffs are not "named plaintiffs" as your justification for not going to the commands?)

The whole purpose of our Meet and Confer was in preparation for plaintiffs filing an imminent Motion for TRO last week to stop these AdSeps and other drops in order to instead allow both you and us to litigate the central issue without having to turn the Court's docket into a traffic accident with Motions for TRO every 15-30 days as people's RA denials come back in and/or the Command's decide to start dropping members from their rolls to the IRR - and/or taking other adverse action against these folks while they're "parties" to a federal lawsuit. I thought it was clear that with "close to 100" names in our discussion that it was plain that it would include MAFL members because there were only 14 named plaintiffs.

I'm happy to discuss again, but I'm afraid without a reconsideration we're going to have to file for an emergency TRO here very shortly.

Regards,

Dale

On Fri, Jun 24, 2022 at 3:26 PM Lowenstein, Jody D. (CIV)  
<[Jody.D.Lowenstein@usdoj.gov](mailto:Jody.D.Lowenstein@usdoj.gov)> wrote:

Dale,

Thanks again for providing us with this information. As I pointed out on Tuesday, it appears that all but one individual listed in the spreadsheet is a

named plaintiff. The rest, as you confirmed, are 67 members of the Members of the Armed Forces for Liberty but are not individual parties to this action. We do not think that non-party members of an association are entitled to individualized relief without joining the action as a party. Our position has thus been not to temporarily pause the initiation of administrative proceedings unless an individual is joined properly as a plaintiff.

For named plaintiffs, however, the military has previously agreed, in certain circumstances, to place a brief hold on initiating separation proceedings or transfer to the IRR when separation or transfer is imminent. But here, Capt. Doughty (the only named plaintiff listed in the spreadsheet) is not facing imminent transfer to the IRR. Capt. Doughty has not yet been served with any administrative action (*e.g.*, an LOC or an LOR). And even *if* he is eventually served with an administrative action, he will have 45 days to respond before any decision is made whether to uphold the action or to issue a notification of reassignment to the IRR. The Air Force is therefore not willing to delay any potential future action at this time because it does not appear to be necessary.

Please let us know if you would like to discuss any of this.

Thank you,

**Jody D. Lowenstein**

Trial Attorney

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**From:** Dale Saran <[dalesaran@gmail.com](mailto:dalesaran@gmail.com)>

**Sent:** Tuesday, June 21, 2022 10:39 AM

**To:** Lowenstein, Jody D. (CIV) <[Jody.D.Lowenstein@usdoj.gov](mailto:Jody.D.Lowenstein@usdoj.gov)>

**Cc:** [bcj@defendingtherepublic.org](mailto:bcj@defendingtherepublic.org); [jward@garloward.com](mailto:jward@garloward.com); Avallone, Zachary A. (CIV) <[Zachary.A.Avallone@usdoj.gov](mailto:Zachary.A.Avallone@usdoj.gov)>

**Subject:** Re: [EXTERNAL] Still Gathering names

Absolutely, Jody.

I confirm that everyone listed there is a member of MAFL.

We've been anticipating all along that we'll need to give you all a list of our folks at some point, so we've been tracking this a number of ways to make sure we've got an accurate roster of everyone who's on board.

I don't know the total count right now off the top of my head, but it's north of 500 right now.

Cheers,

Dale

On Tue, Jun 21, 2022 at 8:46 AM Lowenstein, Jody D. (CIV)  
<[Jody.D.Lowenstein@usdoj.gov](mailto:Jody.D.Lowenstein@usdoj.gov)> wrote:

Hi Dale,

Thanks for providing us with this spreadsheet. Of the individuals whom you've identified, it appears that only one is a named plaintiff. Would you be able to confirm whether each non-plaintiff listed in the spreadsheet is a member of the Members of the Armed Forces for Liberty?

Thank you,

**Jody D. Lowenstein**

Trial Attorney

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**From:** Dale Saran <[dalesaran@gmail.com](mailto:dalesaran@gmail.com)>

**Sent:** Tuesday, June 21, 2022 8:40 AM

**To:** Avallone, Zachary A. (CIV) <[Zachary.A.Avallone@usdoj.gov](mailto:Zachary.A.Avallone@usdoj.gov)>

**Cc:** Lowenstein, Jody D. (CIV) <[Jody.D.Lowenstein@usdoj.gov](mailto:Jody.D.Lowenstein@usdoj.gov)>; Brandon

Johnson <[bcj@defendingtherepublic.org](mailto:bcj@defendingtherepublic.org)>; Jerri Ward <[jward@garloward.com](mailto:jward@garloward.com)>  
**Subject:** Re: [EXTERNAL] Still Gathering names

Zach -

Attached is a spreadsheet that has 68 names (plus one that I've XXX'd out pending approval from him later today).

I also have 6 more that I'm finishing getting Command info from that I'll add to this later.

That's the complete list of everyone who is facing "imminent" drop to IRR or separation. Some of these folks didn't have an exact date, but most have a denied RAR or some other similar situation where Separation appears to be forthcoming shortly. Some of that is guesswork because the troops are only told so much, so please forgive the lack of definitive dates on some.

Appreciate your help. Hope everyone had a good long weekend.

Cheers,

Dale

On Fri, Jun 17, 2022 at 5:31 PM Avallone, Zachary A. (CIV)  
<[Zachary.A.Avallone@usdoj.gov](mailto:Zachary.A.Avallone@usdoj.gov)> wrote:

Dale,

Appreciate the update. We'll be sure to pass along the request whenever you all send it over.

Have a good one,

Zach

**Zachary A. Avallone** | Trial Attorney

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On Jun 17, 2022, at 5:03 PM, Dale Saran  
<[dalesaran@gmail.com](mailto:dalesaran@gmail.com)> wrote:

All,

Just wanted to let you know we're still sifting data and it may take a little longer to get the info to you. My apologies, but we should have something in a usable format with all of the info tonight or tomorrow.

Hope you all have a good weekend.

Cheers,

Dale